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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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|------------------------|--|
| Proceeding | 92042082 |
| Party | Defendant International Gold Star Trading Corp. |
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| Submission | Testimony For Defendant |
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| Signature | /Roger S. Thompson/ |
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| Attachments | Miller Transcript.pdf (75 pages)(174845 bytes) Petitioner Ex. 213.pdf (1 page)(101625 bytes) Petitioner Ex. 214.pdf (1 page)(47623 bytes) Registrant Ex. 134.pdf (2 pages)(108694 bytes) Registrant Ex. 135.pdf (1 page)(314092 bytes) Registrant Ex. 136.pdf (1 page)(96923 bytes) Registrant Ex. 137.pdf (1 page)(193233 bytes) |

Reported by:
FRANCIS X. FREDERICK, CSR, RPR, RMR
JOB NO. 19191

1
2
3
4
5 October 20, 2008

6 9:34 a.m.
7
8

9 Deposition of LEWIS "BUTCH"

10 MILLER, held at the offices of Cohen,
11 Pontani, Lieberman & Pavane, 551 Fifth
12 Avenue, New York, New York, pursuant to
13 Notice, before Francis X. Frederick, a
14 Certified Shorthand Reporter, Registered
15 Merit Reporter and Notary Public of the
16 States of New York and New Jersey.
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A P P E A R A N C E S:

SAMUEL FRIEDMAN, ESQ.

Attorneys for Petitioner

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New York, New York 10007

COHEN PONTANI LIEBERMAN & PAVANE, LLP

Attorneys for Registrant

551 Fifth Avenue - Suite 1210

New York, New York 10176

BY: ROGER S. THOMPSON, ESQ.

ALSO PRESENT:

GALINA PINCOW, International Gold Star

1 PROCEEDINGS

2 (Registrant Exhibit 134, Notice of
3 Deposition of Louis (sic) ("Butch") P.
4 Miller, marked for identification as of
5 this date.)

6 (Registrant Exhibit 135, document
7 bearing production number GOLD 0314,
8 marked for identification as of this
9 date.)

10 (Registrant Exhibit 136, document
11 bearing production number GOLD 0313,
12 marked for identification as of this
13 date.)

14 (Registrant Exhibit 137, document
15 bearing production number GOLD 0316,
16 marked for identification as of this
17 date.)

18 * * *

19 L E W I S "B U T C H" M I L L E R,
20 called as a witness, having been duly
21 sworn by a Notary Public, was examined
22 and testified as follows:

23 EXAMINATION BY

24 MR. THOMPSON:

25 Q. I'll ask the reporter to hand to

1 L. MILLER

2 you four documents that we have had just
3 marked as Respondent's 134, 135, 136 and 137.
4 For the record, 134 is a Notice of Deposition
5 of Mr. Lewis "Butch" P. Miller. Document 135
6 is a document bearing the Bates number Gold
7 0314, a single page. 136 is a single page
8 document bearing Bates number Gold 0313. And
9 document 137 is a document bearing the Bates
10 number 0312.

11 MR. FRIEDMAN: I would just like
12 to note for the record that Ms. Galina
13 Pincow is present today for this
14 deposition.

15 MR. THOMPSON: I believe she is
16 marked as an also present. Am I right,
17 Mr. Reporter?

18 THE COURT REPORTER: Yes.

19 A. Document 134 my name is spelled
20 incorrectly. It's L-E-W-I-S.

21 Q. Well, first, I will apologize for
22 that. It's my spelling. But I'll take you
23 through the other documents after you've had a
24 chance to look at them.

25 With respect to document 134, it

1 L. MILLER

2 identifies the deposition of Mr. Lewis,
3 spelled incorrectly, "Butch" Miller of
4 Queensboro Farm Products, Inc. at 15602
5 Liberty Avenue, Jamaica, New York.

6 Are you Mr. Lewis Miller of
7 Queensborough Farm Products?

8 A. I am.

9 Q. And we've established that your
10 first name is spelled L-E-W-I-S; is that
11 right?

12 A. That is correct.

13 Q. And again I apologize for the
14 misspelling.

15 Are you currently employed by
16 Queensboro Farms?

17 A. Yes.

18 Q. And what is your position there?

19 A. Executive vice president.

20 Q. And how long have you been
21 employed by Queensboro Farms?

22 A. Forty-three years.

23 Q. And have you been the executive
24 vice president during all that time?

25 A. Probably 25 years of it. The last

1 L. MILLER

2 25 years.

3 Q. Okay. So for the last 25 years
4 you've been the executive vice president at
5 Queensboro Farm Products; is that right?

6 A. That's correct.

7 Q. During the course of your
8 employment at Queensboro Farms -- and if I
9 call it Queensboro Farms rather than
10 Queensboro Farm Products, is that all right
11 with you?

12 A. That's fine.

13 Q. Have you had occasion to deal with
14 the company?

15 A. Yes.

16 Q. What is the extent of -- excuse
17 me. What is the nature of your business
18 dealings with International Gold Star?

19 A. We supply International Gold Star
20 various dairy products. The major one being
21 farmers cheese.

22 Q. Now, do you remember -- without
23 referring to the documents that have been
24 placed in front of you, do you remember when
25 you first began -- and by you I mean

1 L. MILLER

2 Queensboro Farm -- began supplying dairy
3 products to International Gold Star?

4 A. Yeah. I believe it was 1996.

5 Q. Do you know on what you base your
6 belief?

7 A. There's a document here that
8 verifies it.

9 Q. And could I ask you to look at it
10 and tell me which of the Bates numbered
11 documents that is.

12 A. Document 136.

13 Q. Okay. What is 136?

14 A. This is a computer printout that
15 determines -- if you see up in the corner on
16 the left, a beginning date which is the date
17 I'm using as my basis, 8/23/96. And it tells
18 you what the purchases are and when the last
19 payment was. It's an internal computer run
20 that Queensboro generates for each of their
21 customers.

22 MR. FRIEDMAN: Please note my
23 objection to the introduction of this
24 document. I am objecting to any
25 document that was not exchanged during

1 L. MILLER

2 the discovery period.

3 MR. THOMPSON: Do you know if this
4 document was responsive to any
5 interrogatory or document request?

6 MR. FRIEDMAN: I'm sure it was.

7 MR. THOMPSON: But you don't know
8 which one?

9 MR. FRIEDMAN: Do you want me to
10 take the time now to look through it?

11 MR. THOMPSON: No. I'm just
12 asking if you know.

13 MR. FRIEDMAN: Off the top of my
14 head I don't.

15 MR. THOMPSON: Okay.

16 BY MR. THOMPSON:

17 Q. So with respect to this document,
18 first, could you tell me where does it come
19 from again?

20 A. This is an internal document that
21 comes out of the computer that tells us when
22 the first day of sale was which was 8/23/96,
23 the last payment day, which on this document
24 is 10/16/08, the last purchase date which is
25 10/7/08.

1 L. MILLER

2 In the right-hand corner at the
3 top it tells us the last amount paid. And on
4 the bottom it says Summary of Month to Date
5 and Period to Date.

6 Q. And is this a document on which
7 Queensboro Farms relies in the conduct of its
8 day-to-day basis?

9 A. Yes.

10 MR. FRIEDMAN: Objection.

11 Q. Is this a document that is
12 maintained in Queensboro Farms' computer
13 records?

14 A. Yes.

15 Q. Do you know when this document was
16 physically generated?

17 A. October 17th at 9:35 in the
18 morning on the top left.

19 Q. And you're reading what appears to
20 be a -- I would characterize as a fax
21 transmission sheet?

22 A. That's correct.

23 Q. Do you know how it came about this
24 document was generated?

25 MR. FRIEDMAN: Objection.

L. MILLER

A. I asked for it at the behest of Gold Star.

Q. Do you know -- well, this document was generated on October 17th. Could you tell me did you transmit it to Gold Star on that date?

A. No. I was told to bring it today.

Q. And for the record, today is Monday the 20th of October; is that right?

A. That's correct.

Q. Now, beginning in -- on or about August 23rd, 1996 when you testified Queensboro Farms first started working with International Gold Star, do you remember what kind of products you supplied to Gold Star?

A. Farmers cheese and pot cheese.

MR. FRIEDMAN: Farmers cheese and what?

THE WITNESS: Pot, P-O-T, cheese.

Q. Prior to that date had you - and by you I mean Queensboro Farms - sold farmers cheese to any other purchaser?

A. No.

Q. Why is that?

1 L. MILLER

2 A. We did not have all the equipment
3 necessary to produce farmers cheese until that
4 time.

5 Q. And what at that time caused you
6 to have this new equipment?

7 A. We had an arrangement with Gold
8 Star that they would provide us with what's
9 called a press which actually presses the
10 cheese after it's made to drive the whey,
11 W-H-E-Y, out of the product.

12 Q. And that is part of the process of
13 manufacturing farmer cheese?

14 A. Yes, it is.

15 MR. FRIEDMAN: Could you read back
16 that answer.

17 (Following portion read back by
18 the court reporter:

19 "QUESTION: And what at that time
20 caused you to have this new equipment:

21 "ANSWER: We had an arrangement
22 with Gold Star that they would provide
23 us with what's called a press which
24 actually presses the cheese after it's
25 made to drive the whey, W-H-E-Y, out of

1 L. MILLER

2 the product.")

3 Q. You described an arrangement. Who
4 at Queensboro Farm negotiated that
5 arrangement?

6 A. I did.

7 Q. And with whom at Gold Star did you
8 negotiate it?

9 A. Robert Pincow.

10 Q. Do you remember when that
11 negotiation took place?

12 A. 1996, prior to this date. I don't
13 know exactly when.

14 Q. Would it have been a long time
15 before that date or shortly before that date?
16 Do you remember?

17 MR. FRIEDMAN: Objection.

18 A. It could have been months before.
19 I just don't remember.

20 Q. Now, do you know from your own
21 knowledge what labels, if any, were applied to
22 the products you began selling in August of
23 1996?

24 MR. FRIEDMAN: Objection to the
25 categorization.

1 L. MILLER

2 A. Could you repeat the question?

3 Q. I'll rephrase it.

4 You said you first started selling
5 products on or about August 23rd of 1996 to
6 Gold Star; is that right?

7 A. That's correct.

8 Q. And do you remember exactly what
9 labels, if any, were on those products as they
10 were sold in 1996?

11 A. At the inception of the sale there
12 was a simple label that said Gold Star on the
13 product. Sometime after that Gold Star
14 directed Queensboro to not use that label,
15 send the product in unlabeled, and they would
16 apply their own labels.

17 Q. Do you remember when that was?

18 A. I think it was within two years
19 after we started.

20 Q. So that would be sometime in 1998.

21 A. That's my recollection.

22 Q. Now, we have referred to what has
23 been marked as Exhibit 136. And we still have
24 before you Exhibits 135 and 137. Could you
25 please explain to me, if you can, what Exhibit

1 L. MILLER

2 135 represents.

3 A. This is a printout of what
4 Queensboro establishes as an accounts
5 receivable, meaning that on the date this was
6 printed there were three open items that Gold
7 Star was billed but had not paid for yet. And
8 this was printed in 1998.

9 Q. Do you know why this record has
10 been maintained for the last nine years?

11 MR. FRIEDMAN: Which exhibit are
12 we referring to?

13 MR. THOMPSON: 135.

14 A. Well, this is part of a much
15 larger record that Queensboro maintains for
16 their own internal records of what happens in
17 the receivables of all their customers.

18 Q. Now, this goes back then to
19 invoices from December of 1998 but you've
20 indicated that the first sale was on or about
21 August of '96.

22 Do you know why Exhibit 35 doesn't
23 go back any older than that?

24 MR. FRIEDMAN: Objection.

25 A. I don't know. My guess is that we

1 L. MILLER

2 don't have all the records from ten years
3 back.

4 Q. So the oldest record that you're
5 able to establish for product sales to Gold
6 Star is what we see in 135?

7 A. That's correct.

8 Q. Do you know what products were
9 sold on or about December 12th of 1998?

10 A. This document doesn't show the
11 products sold. However, we were selling pot
12 cheese and farmer cheese to Gold Star from the
13 beginning.

14 Q. Were there any other products you
15 were selling in the 1998 time frame? Or
16 December 1998 time frame?

17 A. No.

18 Q. Do you know what if any labels
19 were applied to the products that you sold to
20 Gold Star after they left your premises?

21 A. No, I do not. They had the
22 labels. We didn't.

23 Q. Did you ever have discussions
24 about what International Gold Star called
25 those products?

1 L. MILLER

2 MR. FRIEDMAN: Objection.

3 A. No.

4 Q. Could you please tell me what
5 Exhibit 137 is.

6 A. 137 is a weekly invoice for
7 merchandise purchased by Gold Star from
8 Queensboro. The invoice dated on the bottom
9 left is 11/15/97 so that's the week ending
10 11/15/97. And on that invoice they purchased
11 two products, 1,122 pounds of farmer cheese
12 and 60 containers of five-pound pot cheese.
13 The total bill was \$2,284.50.

14 Q. Do you know where the original of
15 this document was maintained?

16 A. In our office.

17 Q. And is this a -- is the original
18 of this document, rather, a document
19 maintained by Queensboro Farms?

20 A. Yes.

21 Q. Do you know if Queensboro Farms
22 has any earlier invoices going to Gold Star
23 for the farmers cheese that Queensboro sold to
24 Gold Star; that is, any documents -- let me
25 start this over.

L. MILLER

Do you know if Queensboro Farms has in its records any invoices to Gold Star for farmers cheese which are earlier than Exhibit 137?

A. To the best of my recollection, this was the earliest document for sales in weekly bill form that Queensboro could find.

MR. THOMPSON: I'm through with my questions. Thank you, Mr. Miller.

EXAMINATION BY

MR. FRIEDMAN:

Q. My name is Samuel Friedman. I represent Four Season's Dairy. I'll be asking you a few questions.

Now, you testified that initially you were providing farmers cheese and pot cheese to Gold Star with a Gold Star label, correct?

A. (Witness nods.)

Q. Please answer audibly so that the court reporter can take it down.

A. Yes.

Q. Thank you.

What is pot cheese?

1 L. MILLER

2 A. It's a product somewhat similar to
3 cottage cheese but usually dryer and bigger
4 curds.

5 Q. What did the label say besides
6 Gold Star?

7 A. Gold Star pot cheese and Gold Star
8 farmer cheese.

9 Q. Was there anything else that the
10 label said?

11 A. Probably listed the ingredients.

12 Q. Do you have any examples of such
13 labels?

14 A. I do.

15 (Handing.)

16 Q. Thank you.

17 MR. FRIEDMAN: The witness has
18 handed me a document which I'm looking
19 at.

20 (Pause on the record.)

21 MR. FRIEDMAN: I'd like to have
22 this document marked, please as
23 Petitioner's --

24 MR. THOMPSON: Let's take a break
25 for a moment while I make some copies.

1 L. MILLER

2 (Recess taken.)

3 MR. THOMPSON: I'll first hand you
4 back, Mr. Friedman, the original of the
5 document that was handed to you by Mr.
6 Miller and then I'll give you several
7 copies and ask if you'd be able to have
8 one of the copies marked as the exhibit
9 so that we can return the original back
10 to Mr. Miller.

11 MR. FRIEDMAN: I'll object to your
12 characterization of the document that
13 Mr. Miller handed me as being an
14 original.

15 MR. THOMPSON: I am simply saying
16 it was the document that was handed to
17 you by Mr. Miller.

18 MR. FRIEDMAN: As long as we're
19 clear on that.

20 MR. THOMPSON: Just that is the
21 document -- that is the original
22 document he handed to you. Whether
23 that's a copy of something else I make
24 no representations because I don't know.

25 MR. FRIEDMAN: But clearly it is a

1 L. MILLER

2 photocopy. Then, I mean, I would like
3 to have that allegedly original document
4 available for questioning if there's
5 going to be -- if you will not stipulate
6 that that is a photocopy.

7 MR. THOMPSON: I have no problem
8 stipulating that that's a photocopy.

9 (Petitioner's Exhibit 213,
10 photocopy of sour cream label, pot
11 cheese label and farmer cheese label,
12 marked for identification as of this
13 date.)

14 BY MR. FRIEDMAN:

15 Q. Okay. So the document that the
16 witness previously handed to me has now been
17 marked as Exhibit P-213.

18 Now, Mr. Miller, you have
19 described this document which we have agreed
20 is a photocopy as being a copy of the label
21 that was affixed to the product that
22 Queensboro Farms manufactured for Gold Star;
23 is that correct?

24 A. That's correct.

25 Q. And during what time period was

1 L. MILLER

2 this label affixed to the product manufactured
3 by Queensboro?

4 A. From August of 1996 through the
5 beginning of 1998.

6 Q. Now, it appears to me that on this
7 photocopy there is more than one label; is
8 that correct?

9 A. That's correct.

10 Q. Okay. So at the upper left side
11 of this document, we see something for sour
12 cream. Is that the label that Queensboro was
13 applying to the products sold to Gold Star
14 that was sour cream? What is in the upper
15 left?

16 A. It's a label for sour cream. My
17 recollection is in the beginning of our
18 business relationship we didn't sell them sour
19 cream. But that is a label for sour cream.

20 Q. When did you -- when did
21 Queensboro begin selling sour cream to Gold
22 Star?

23 A. Many years later. I don't
24 recollect the date.

25 Q. Is it fair to say that it was

1 L. MILLER

2 after the year 2000?

3 A. Yes.

4 Q. Is it after the year 2002?

5 A. I don't remember.

6 Q. Was it after 9/11? Does the event
7 refresh your recollection in any way?

8 A. I don't remember.

9 Q. Now, what records does -- well,
10 withdrawn.

11 Does Queensboro continue to sell
12 this sour cream product to Gold Star today?

13 A. Not on a regular basis.

14 Q. On a sporadic basis?

15 A. Yes.

16 Q. And is it labeled in the same
17 manner?

18 A. No.

19 Q. How is it labeled today?

20 A. There's a Country Creamery label
21 that Queensboro has. And if Gold Star ordered
22 sour cream that's the label they would get.

23 Q. Is it the case that Gold Star
24 would provide the label?

25 A. No.

1 L. MILLER

2 Q. How would you -- how is the label
3 affixed to the product?

4 A. Queensboro has a printed lid that
5 it puts on the sour cream and that lid is the
6 Country Creamery label.

7 Q. Is that Gold Star's own label?

8 A. No.

9 Q. Whose label is it?

10 A. Queensboro's.

11 Q. Now, I noticed that there is a
12 designation, grade A pasturized. What does
13 that represent?

14 A. In the dairy business there is a
15 code to which the plant has to adhere in plant
16 actual ratings by inspectors that it can ship
17 products interstate. When that product is
18 approved to be shipped interstate it carries a
19 grade A designation.

20 Q. Is that an FDA requirement?

21 A. It's a federal milk order
22 requirement called IMS. Each plant that ships
23 interstate has a designated IMS rating. IMS
24 stands for interstate milk shippers.

25 Q. Does this requirement apply to

1 L. MILLER

2 farmers cheese as well?

3 A. I believe so. I think so.

4 Q. Does it apply to pot cheese as
5 well?

6 A. Yes.

7 Q. You used the term plant. What did
8 you mean by that term?

9 A. These products are made in a milk
10 plant that Queensboro operates.

11 Q. How many milk plants does
12 Queensboro operate?

13 A. One.

14 Q. Where is it located?

15 A. The town is Canastota, New York.
16 C-A-N-A-S-T-O-T-A.

17 Q. And does that plant have an
18 identifying number?

19 A. It does.

20 Q. Okay. The witness is now looking
21 at the document marked as P-215.

22 You're looking at -- where are you
23 looking on the document, Mr. Miller?

24 A. If you look at pot cheese.

25 Q. Yes.

1 L. MILLER

2 A. Plant number 360348.

3 Q. Okay. So now we're looking at the
4 label that was applied to pot cheese. Do you
5 know what time period this label is from?

6 A. My recollection is when I started
7 in 1996 to sometime probably again in 1998.

8 Q. Is it still used today?

9 A. No.

10 Q. Okay. So was it a requirement
11 that the plant be identified on this label?

12 A. It was.

13 Q. Is there also such a requirement
14 with respect to sour cream?

15 MR. THOMPSON: I'll object to
16 form. We're not clear what time frame
17 you're talking about.

18 Q. Let's say during the period of
19 1996 to 1998.

20 A. I think there was that
21 requirement.

22 Q. So is it fair to say then that
23 there was -- that the label on the upper
24 left-hand corner in this document is not the
25 complete label for sour cream?

1 L. MILLER

2 A. Well, that may be but they were
3 not purchasing sour cream so I think it's
4 academic.

5 Q. You're stating Gold Star was not
6 purchasing sour cream at that -- are you
7 limiting it to the time period of '96 to '98?

8 A. In that question, yes.

9 Q. Okay. But there did come a time
10 you testified that Queensboro did begin to
11 sell sour cream to Gold Star.

12 A. Under Country Creamery label.

13 Q. And did the fact that it said
14 Country Creamery in any way affect the
15 requirement of indicating the plant number on
16 the label?

17 A. No.

18 Q. So then why was Queensboro not
19 required to put the plant number on the label
20 for sour cream?

21 A. I believe they never purchased
22 sour cream. They made the label and never
23 purchased sour cream under the Gold Star
24 label.

25 Q. They being Gold Star.

1 L. MILLER

2 A. That's correct.

3 Q. How is it...

4 (Pause on the record.)

5 MR. THOMPSON: I'm sorry. I just
6 had my paralegal come in to tell me that
7 there was a mix-up on the Bates
8 numbering so it's something I'll
9 straighten out at the break. Apparently
10 one of the numbers had been
11 inadvertently duplicated from a prior
12 submission.

13 MR. FRIEDMAN: These things
14 happen.

15 Okay. Can you read back the last
16 question and answer, please.

17 (Following portion read back by
18 the court reporter:

19 "QUESTION: So then why was
20 Queensboro not required to put the plant
21 number on the label for sour cream?

22 "ANSWER: I believe they never
23 purchased sour cream. They made the
24 label and never purchased sour cream
25 under the Gold Star label.

1 L. MILLER

2 "QUESTION: They being Gold Star.

3 "ANSWER: That's correct.")

4 BY MR. FRIEDMAN:

5 Q. Do you know why they never did
6 sour cream under the Gold Star label?

7 A. I do not.

8 Q. How is it that you have this label
9 in your files if they never used it?

10 A. We would keep any labels supplied
11 by our customers for a certain period of time.
12 And we happened to have their labels.

13 Q. Was this label contained within
14 the files of Queensboro up until today?

15 A. I'm not sure that the label
16 inventory is there but this is a copy of a
17 label that we found last Thursday or Friday.
18 So we have at least this.

19 Q. Okay. So it's your testimony then
20 that Queensboro found the label shown in the
21 upper left-hand side in its own files.

22 A. Correct.

23 Q. Was there anything found with the
24 label to indicate whether it had been used or
25 had not been used?

1 L. MILLER

2 MR. THOMPSON: I'll object. There
3 are three labels on this page. I'm not
4 sure which one we're talking about.

5 MR. FRIEDMAN: I'm referring to
6 the upper left-hand side.

7 A. No.

8 Q. Now, directing your attention to
9 the label for farmers cheese. Why is the
10 plant number not identified?

11 A. I can only believe it was an
12 error.

13 Q. What does this label represent?
14 And I'm talking about the farmers cheese
15 label.

16 A. It states the name of the product.
17 It states the ingredients in the product. It
18 states the nutritional information of the
19 product. And it states the name International
20 Gold Star Trading Corp. who it was packaged
21 for.

22 Q. Was this label actually affixed to
23 the product?

24 A. I believe that it was.

25 Q. And in what manner was it affixed?

1 L. MILLER

2 A. I think it was on a roll and it --
3 you peeled the label off the roll with
4 adhesive on the back of the label and it was
5 put onto the box that contains the farmer
6 cheese.

7 Q. Was it affixed by Queensboro to
8 the product?

9 A. This label was.

10 Q. The farmers cheese was.

11 A. Yes.

12 Q. And during what period of time was
13 this label affixed to the product by
14 Queensboro?

15 A. From August 1996 through early
16 1998.

17 Q. Was the requirement of indicating
18 grade A in existence at that time from '96 to
19 '98?

20 A. There was a grade A designation.
21 But not all products are required to be
22 labeled grade A. So I just don't know whether
23 this was not labeled grade A as an error or it
24 wasn't required.

25 Q. Is it fair to say that Queensboro

1 L. MILLER

2 Farms would not be able to remain in business
3 as a dairy plant if it did not adhere to the
4 requirements of labeling of dairy products?

5 MR. THOMPSON: Objection to form.

6 I don't know how you're asking this
7 witness for a legal conclusion. We
8 haven't established he has a legal
9 background sufficient to answer such a
10 question.

11 Q. You've been the executive vice
12 president of Queensboro Farms for 25 years?

13 A. Correct.

14 Q. And during all those 25 years
15 Queensboro Farms has been a grade A
16 manufacturer of dairy products.

17 A. Yes.

18 Q. Is it fair to say that you are
19 familiar with the requirements for labeling of
20 dairy products?

21 A. Not every requirement.

22 Q. But this requirement. The
23 requirement of putting grade A on a label
24 where the label does not otherwise indicate
25 that it comes from the manufacturer.

1 L. MILLER

2 A. Not necessarily.

3 Q. Please explain.

4 A. All products are not necessary to
5 carry grade A. I don't remember which ones
6 are required and which aren't.

7 Q. So you don't know whether farmers
8 cheese required grade A at that time period.

9 A. I said that.

10 Q. That's your testimony?

11 A. Yeah.

12 Q. Now where are the originals of
13 these labels?

14 A. What do you mean by the originals?

15 Q. By the original I mean rather than
16 a photocopy of the label, the actual label
17 itself that was used on the product.

18 A. I stated before I don't know if we
19 have a supply of the labels or not. This may
20 have been a photocopy that goes back in our
21 records for the original label.

22 Q. And in what form were these three
23 labels, photocopies of which we see on P-213,
24 when found in the files of Queensboro?

25 A. I don't know.

1 L. MILLER

2 Q. Who found them?

3 A. Someone in our company.

4 Q. Who?

5 A. Someone upstate at the plant. I
6 called the plant and I said send me whatever
7 you have on Gold Star.

8 Q. When did you make this phone call?

9 A. Friday.

10 Q. Friday of what week?

11 A. Last Friday.

12 Q. I thought you said that these were
13 found on Thursday.

14 A. I was referring to this record of
15 135.

16 Q. And where was 135 found?

17 A. In Queensboro's books and records
18 in Jamaica in the home office.

19 Q. As opposed to the plant in
20 Canastota.

21 A. That's correct.

22 Q. Do you keep the -- is there any
23 manufacturing plant in your offices in
24 Jamaica?

25 A. Queensboro in Jamaica is a tenant

1 L. MILLER

2 of Elmhurst Dairy. Queensboro in Jamaica gets
3 milk from Elmhurst Dairy but not manufactured
4 products. So Queensboro has no plants in
5 Jamaica. But Elmhurst Dairy has a plant and
6 we are a customer of Elmhurst Dairy.

7 Q. Was it part of your duties as
8 executive vice president for Queensboro to
9 work together with Gold Star to ensure that
10 the labels that would be affixed on the
11 products for Gold Star were in compliance with
12 applicable requirements?

13 A. No.

14 Q. Was that the duty of anybody at
15 Gold Star? I'm sorry. At -- was that the
16 duty of anybody at Queensboro?

17 A. I don't think so. The labels are
18 supplied by the customer. And we affix the
19 labels as asked.

20 Q. You affix the labels as asked
21 whether or not Queensboro has independently
22 determined whether the labels are in
23 compliance?

24 A. If we determine that it's
25 incorrect at the time we would indicate so to

1 L. MILLER

2 the customer. Apparently either these were
3 never applied --

4 Q. You're pointing to farmers cheese
5 now, correct?

6 A. To farmers cheese.

7 -- or a later addendum was
8 corrected at some other point. I don't know.
9 This is what we found.

10 Q. What were the guidelines given to
11 the person at the plant for searching? What
12 were they looking for?

13 A. I asked would you send me anything
14 that you have on Gold Star.

15 Q. And did they send everything?

16 A. They sent this (indicating), and
17 they sent -- oh, sorry. This farmers 213 and
18 they sent 136.

19 Q. Okay. Referring back to 213, in
20 what form was 213 as sent to you? Was it a
21 photocopy?

22 A. It was sent to me as just what you
23 see. I don't know.

24 Q. You pulled this document out of a
25 manila envelope that is sitting on the table

1 L. MILLER

2 here at this deposition room.

3 Does the manila envelope contain
4 other records relating to Queensboro's
5 manufacturing for Gold Star?

6 A. Yes.

7 Q. Could you tell me what those other
8 documents are?

9 A. This document (indicating) relates
10 to a list of possible products that Gold Star
11 could purchase from us which goes back to the
12 document dated 136. The 136 indicates a
13 dollar value and this as yet unnamed document
14 lists the sales price for each item that they
15 could possibly purchase.

16 Q. May I see that document, please?

17 (Witness hands document.)

18 Q. Thank you.

19 (Pause on the record.)

20 MR. THOMPSON: May I see it?

21 MR. FRIEDMAN: Of course.

22 (Pause on the record.)

23 Q. When you say other documents that
24 they could possibly purchase from you what --

25 A. Other products.

1 L. MILLER

2 Q. Other product. As site as opposed
3 to products?

4 MR. THOMPSON: No, you said other
5 documents that they could purchase from
6 you.

7 MR. FRIEDMAN: Oh, I'm sorry. I
8 misspoke. Withdraw that.

9 Q. The document you handed to me
10 refers to other products that Gold Star could
11 purchase from Queensboro in the time frame of
12 1996 to 1998?

13 A. Yes.

14 Q. And when you say that they could
15 purchase from you, what do you mean by that?

16 A. When we put products and prices
17 into our computer to allow for the fact that
18 perhaps they would purchase something that is
19 not in their regular product mix, the computer
20 carries a price for it. So I think that
21 showed some products they were not actually
22 purchasing but there were prices in case they
23 purchased them.

24 Q. So how do you know which of the
25 products that they were purchasing at the time

1 L. MILLER

2 and which are the products that they were not?

3 A. Well, one is we have a bill that
4 we showed you which is item 137. Number two,
5 I remember that they only started with pot
6 cheese and farmer cheese.

7 Q. Now, this document that you've
8 handed me reflects that it was generated on
9 October 18 of 2008, correct?

10 A. I don't have a copy in front of
11 me.

12 It says October 17th, 2008.

13 Q. You're referring to the fax number
14 at the top, correct? Fax transmission number?

15 A. Yes.

16 Q. I was referring to the date set
17 forth at the head of one of the columns.

18 A. Okay. I see. That says 10/18/08.

19 Q. Does that indicate that it was
20 generated on 10/18/08?

21 A. I think so.

22 MR. FRIEDMAN: Roger, could we
23 have photocopies made of this document
24 so we could mark it?

25 MR. THOMPSON: Sure.

1 L. MILLER

2 MR. FRIEDMAN: Thank you.

3 (Pause on the record.)

4 MR. THOMPSON: I'll just state for
5 the record that these documents which
6 were not produced by us and are not
7 being -- haven't been marked by us are
8 likely to be attorneys' eyes only
9 documents so I'm alerting you to that
10 now.

11 MR. FRIEDMAN: Very well. I'm
12 returning to you the document that you
13 initially handed to me which appears to
14 be in the nature of a photocopy. And
15 I'm going to ask the court reporter to
16 mark this copy that Mr. Thompson has
17 provided as 214. I guess we should put
18 the exhibit in front of the witness.

19 Does it matter to you, Mr. Miller,
20 whether we put an exhibit tab on the
21 original document that you've handed to
22 us rather than a photocopy?

23 THE WITNESS: No.

24 MR. FRIEDMAN: Okay. So let's
25 mark what the witness handed.

1 L. MILLER

2 MR. THOMPSON: Okay.

3 (Petitioner's Exhibit 214,
4 document headed Oct-17-2008 09:35AM
5 FROM-QUEENSBORO FARMS, marked for
6 identification as of this date.)

7 BY MR. FRIEDMAN:

8 Q. Are you familiar with the
9 handwriting of the person who put an asterisk
10 on this document and underlined certain dates
11 and a rate?

12 A. Yeah.

13 Q. Whose handwriting is that?

14 A. Cindy Hastings.

15 Q. And who is she?

16 A. A clerk at the Canastota plant.

17 Q. Cindy Hastings?

18 A. Yes.

19 Q. And was she the one to which
20 searching for Gold Star-related documents was
21 delegated?

22 A. Yeah.

23 Q. And do you know what caused her to
24 underline this material?

25 A. That's the item that they're

1 L. MILLER

2 currently purchasing.

3 Q. Farmers cheese. And do -- is a
4 label applied by Queensboro to the product
5 they are currently purchasing?

6 A. No.

7 Q. It is sent out with no label?

8 A. That's correct.

9 Q. Do you know what label it's sold
10 under?

11 A. I don't.

12 Q. Are you familiar with the
13 Babushka's Recipe brand?

14 A. I've heard about it. I've never
15 seen it.

16 Q. What have you heard about it?

17 A. I've heard that that's a label
18 that Gold Star uses on their products.

19 Q. Do you know which products they
20 use it on?

21 A. I do not.

22 Q. Does Queensboro manufacture other
23 products, other dairy products that are sold
24 under a Babushka label?

25 A. No.

1 L. MILLER

2 Q. Or a label very similar such as
3 Babushkino?

4 MR. THOMPSON: I object to that
5 characterization as to whether it's
6 similar or very similar or not similar.
7 To the extent that you've itemized other
8 ones, fine.

9 MR. FRIEDMAN: I will withdraw
10 that characterization.

11 Q. Does Queensboro sell other dairy
12 products under a label known as Babushkino?

13 A. I don't think so.

14 Q. Did it sell other dairy products
15 under a label of Grandmother's?

16 A. I don't think so.

17 Q. Is it fair to say that Queensboro
18 would be careful not to sell a product under a
19 label used by a competitor of Gold Star -- let
20 me rephrase that.

21 MR. THOMPSON: Thank you.

22 Q. Is it fair to say that Queensboro
23 would be careful not to use the identical
24 brand as sold by a competitor of Gold Star?

25 MR. THOMPSON: I'll object to that

1 L. MILLER

2 form, too.

3 MR. FRIEDMAN: Withdrawn.

4 Q. Is it fair to say that Queensboro
5 would not manufacture product under a label
6 that Gold Star would be considered to be
7 infringing on its own label?

8 MR. THOMPSON: Objection.

9 Q. What's the basis for your
10 assertion that you believe that Queensboro is
11 not selling other dairy products under a
12 Babushkino label?

13 A. We don't characterize any labels
14 Babushkino. And, you know, we really have no
15 knowledge of that label or what they mean.

16 Q. Do you know at what point, if any,
17 Queensboro began supplying dairy product to
18 Gold Star that Gold Star sold under a label of
19 Babushka's Recipe?

20 A. I don't know. I don't know what
21 Gold Star did with the product. I only know
22 that if we were asked not to label the product
23 and ship it to Gold Star we did it.

24 MR. FRIEDMAN: Could you just read
25 that back, please.

1 L. MILLER

2 (Record read.)

3 Q. That is you did what Gold Star
4 asked you.

5 A. That's correct.

6 Q. So you sold the product out
7 without a label as per Gold Star's request?

8 A. Yes.

9 Q. Okay. And you have no personal
10 knowledge of what label, if any, was affixed
11 to that product sold to Gold Star.

12 A. I'm not familiar with that label.

13 Q. Babushka's Recipe label.

14 A. Any label.

15 Q. And during the period of 2000
16 until today, was Queensboro manufacturing any
17 product under a -- any dairy product under a
18 Babushka label for any entity other than Gold
19 Star?

20 A. I'm not familiar with Babushka
21 label. What we characterized as labels are
22 the names of the customers. Not what the
23 label says.

24 Q. What do you mean you characterized
25 it as the name of the customer?

1 L. MILLER

2 A. We would call it a Gold Star label
3 or an XYZ label for somebody else.

4 Q. Do you know whether from the year
5 2000 until today Queensboro was manufacturing
6 dairy product for an entity other than Gold
7 Star under a Grandmother's Recipe label?

8 A. Again, I don't know the label. I
9 only know the customer's name.

10 Q. You pulled out another set of
11 documents from that manila envelope. It was a
12 computer-generated printout I believe.

13 A. Yes.

14 MR. THOMPSON: I object to you
15 rummaging through his entire folder.

16 MR. FRIEDMAN: Well, it's a folder
17 that the witness considered important
18 enough to bring to this deposition and
19 place before him as he's testifying so I
20 think I'm entitled to see it.

21 MR. THOMPSON: I would disagree
22 with the importance placed upon it by
23 the witness. He considered it important
24 enough not to put on the floor or put in
25 the garbage. But that doesn't

1 L. MILLER

2 necessarily mean it has anything to do
3 with this case. It certainly doesn't
4 have anything to do with the scope of
5 the direct examination. And I don't
6 know that you're allowed to have him
7 shake out his pockets and see what he's
8 brought with him.

9 MR. FRIEDMAN: I certainly haven't
10 asked him to shake out his pockets.

11 BY MR. FRIEDMAN:

12 Q. Is that a document that you
13 reviewed in connection with coming to testify
14 today?

15 A. I did not review it. I was asked
16 by Gold Star to get anything that I could come
17 up that would relate to the purchase date that
18 Gold Star started with Queensboro. All of
19 those documents you've seen. This document is
20 a receivable run from something past 1996.
21 And at the time this was what Queensboro could
22 establish as a starting date. And we dug
23 further and we were able to come up with
24 information that predated this.

25 Q. Okay. And is there a document

1 L. MILLER

2 that has been marked today that was -- at this
3 deposition that was photocopied from that
4 receivables run?

5 A. No.

6 Q. And when you say receivables, what
7 are you referring to?

8 A. Money owed by Gold Star to
9 Queensboro.

10 Q. And what is the earliest date
11 reflected on that document of monies owed by
12 Gold Star to Queensboro?

13 A. 12/1/01.

14 Q. And why is that the earliest date,
15 if you know?

16 A. I asked everyone in our company
17 who I thought would be able to supply
18 information to come up with what they could
19 and show it to me as to when Gold Star started
20 to do business with Queensboro.

21 Q. And from what department within
22 Queensboro was that computer run generated?

23 A. Accounts receivable.

24 Q. Do accounts receivables' records
25 at Queensboro go back prior to the date of

1 L. MILLER

2 12/1/01?

3 A. Not -- I think the answer to that
4 is no because I asked get me as far back as
5 you can and this is what they got me.

6 Q. But do you know for a fact whether
7 the accounts receivables records at Queensboro
8 in fact contained information from prior to
9 12/1/01?

10 A. Well, I'm sure it contains
11 information. I don't know whether we still
12 have the information.

13 Q. I'm talking about not necessarily
14 relating to Gold Star. I'm referring to the
15 records kept by Queensboro in general.

16 A. I don't know the answer to that.

17 Q. Do you mind if I take a look at
18 that document?

19 MR. THOMPSON: Well, I object to
20 having any document as part of this
21 deposition that, A, goes beyond the
22 scope of direct; B, it has been
23 testified by the witness as not
24 necessarily being the oldest document;
25 and, C, containing a great deal of

1 L. MILLER

2 presumably confidential information of,
3 A, Queensboro, possibly, B, Gold Star
4 and others that's totally irrelevant and
5 extraneous to these proceedings.

6 MR. FRIEDMAN: It's a document
7 that the witness reviewed at this
8 deposition and I'm therefore entitled to
9 review it.

10 MR. THOMPSON: Excuse me. He
11 reviewed it because you asked him to
12 look at it. He testified that he didn't
13 review it in preparation for the
14 deposition. And you said would you look
15 at it now and now you're saying because
16 I asked you look at it now I get to see
17 it?

18 MR. FRIEDMAN: He testified that
19 he asked people within his company to
20 search for records relating to Gold
21 Star. These are the records -- yes, Ms.
22 Pincow?

23 MS. PINCOW: I'm talking to
24 myself. Is that allowed?

25 MR. FRIEDMAN: Actually, it's

1 L. MILLER

2 not.

3 MS. PINCOW: Okay.

4 MR. FRIEDMAN: He testified that
5 this was among the records that he
6 found. He brought the records today to
7 this deposition. Presumably it was
8 reviewed by Ms. Pincow and by counsel.
9 I'm, therefore, entitled to see it.

10 I do not wish to cause any
11 unnecessary annoyance or embarrassment
12 to a nonparty witness. That is not my
13 objective.

14 MR. THOMPSON: Before I -- first,
15 that document was not shown to me. So I
16 haven't reviewed the document. You're
17 saying you're presuming it was shown to
18 Ms. Pincow. I don't know whether it was
19 or wasn't. I know what the witness gave
20 me before we came in here. I know that
21 he pulled that document out of his
22 folder and before I go any further with
23 this line of questioning which, again,
24 goes beyond the scope of direct, goes
25 beyond anything that had any relation to

1 L. MILLER

2 what was on direct. I'd like to know
3 what it is that we're going to be
4 arguing about to see if it's even worth
5 arguing about.

6 MR. FRIEDMAN: To see whether it
7 reflects information concerning the
8 earliest use by Gold Star of marks that
9 are in controversy in this litigation as
10 well as the reliability of information
11 produced by the witness upon whose
12 testimony you are relying.

13 MR. THOMPSON: Well, the witness
14 already testified that he found earlier
15 documents than that. He's testified
16 that he doesn't know if the records and
17 accounts receivable go back any farther
18 than that or if those reflect the
19 earliest records available. Considering
20 the fact that he's got dates from other
21 documents, from other sources that go
22 back earlier than this, it certainly
23 seems that those do not have any
24 relation to "the earliest date."

25 The witness has already testified

1 L. MILLER

2 that he doesn't know of any usage of
3 trademarks by people of products once
4 they've left his factory. We haven't
5 established that that document contains
6 within it any reference to any
7 trademarks that are of any relevance to
8 this case.

9 I mean, you could ask -- if you
10 want to ask him if it says anything
11 about the Babushka's Recipe, I have no
12 objection to that.

13 MR. FRIEDMAN: If all that you've
14 said is accurate then you should have no
15 objection to my seeing the document.

16 MR. THOMPSON: Well, as I said, I
17 haven't seen the document so I don't
18 know what's in it.

19 MR. FRIEDMAN: So let's have a
20 look.

21 MR. THOMPSON: Well, I suggest
22 that you allow me to have a look at it
23 before I can see if it's worth arguing
24 about.

25 MR. FRIEDMAN: Please do.

1 L. MILLER

2 MR. THOMPSON: May I take a look
3 at that, Mr. Miller.

4 (Witness hands document.)

5 MR. THOMPSON: I'd like to do this
6 out of your presence, Mr. Friedman, so
7 if you don't mind I'll step out.

8 MR. FRIEDMAN: Sure. No problem.

9 (Recess taken.)

10 MR. THOMPSON: I'll state for the
11 record that I've now reviewed the
12 document and I won't attempt to
13 characterize it. I think that would be
14 inappropriate. I'll just state that it
15 doesn't seem to contain any information
16 that is relevant or responsive to your
17 inquiries but if it will get Mr. Miller
18 out of here more quickly to show you the
19 document with the proviso that it's not
20 marked unless you choose to mark it in
21 which case I will object to its being
22 used. Just for the purpose of ending
23 this line of what I think is a pointless
24 inquiry and getting Mr. Miller out of
25 here faster, let's do it.

1 L. MILLER

2 MR. FRIEDMAN: Okay. Let's do it.

3 THE WITNESS: I'll probably have
4 to show this to you.

5 MR. FRIEDMAN: Okay.

6 MR. THOMPSON: Just hand it across
7 the table.

8 THE WITNESS: Is that okay?

9 (Document review.)

10 THE WITNESS: Those are dollar
11 sales by date.

12 MR. FRIEDMAN: Yes.

13 THE WITNESS: By week.

14 This is the oldest that we can
15 find in this receivable. And it goes
16 backwards to this page which is the most
17 recent. These are dollars of sales by
18 week. Week ending.

19 MR. FRIEDMAN: Okay. And the
20 material in the middle is Gold Star?

21 THE WITNESS: It's all Gold Star.
22 Other weeks.

23 MR. FRIEDMAN: Other weeks. In
24 between the dates.

25 THE WITNESS: Yes.

1 L. MILLER

2 MR. FRIEDMAN: I accept your
3 representation. Thank you. I do not
4 need to mark the document.

5 BY MR. FRIEDMAN:

6 Q. Did you bring any other documents
7 with you today?

8 A. No.

9 Q. Apart from farmers cheese, pot
10 cheese, and sour cream, were there any other
11 dairy products that Queensboro has sold to
12 Gold Star?

13 A. No.

14 Q. And the document that has been
15 marked as 137, may I have a look at that
16 original document again.

17 (Counsel hands document.)

18 Q. I see that there is an indication
19 of office copy at the bottom of the document.
20 And that there is perforation at the top of
21 the page and at the bottom of the page.

22 In what manner was this document
23 kept by Queensboro Farms in its records?

24 A. I don't know what you mean by what
25 manner. This is -- the bills are done in

1 L. MILLER

2 duplicate. The office copy is the one we keep
3 in our office. And the customer gets the
4 original copy.

5 Q. Then is it fair to say that
6 Queensboro has a file with invoices similar to
7 the one that has been marked as 137, invoices
8 of product sold to Gold Star?

9 A. It's fair to say that Queensboro
10 has it. I just don't know how far back it
11 goes. This is what we could find as the
12 furthest back in time.

13 Q. Was this found together with a
14 number of other invoices to Gold Star?

15 A. No, not to Gold Star. It was in a
16 group of invoices of Queensboro customers.

17 Q. So the records would not be
18 maintained by Queensboro with respect to
19 individual customers.

20 A. I'm not sure I understand that
21 question.

22 Q. Where did Queensboro look in order
23 to find this document that has been marked as
24 137? Was that done by the woman you referred
25 to, Cindy?

1 L. MILLER

2 A. No. That's a different place.

3 Q. This record was found in the
4 Jamaica offices?

5 A. Yeah.

6 Q. Now, could you tell me who is it
7 that asked you to look for documents relating
8 to International Gold Star?

9 A. Galina Pincow.

10 Q. And approximately when did she
11 first ask you to look for such documents?

12 A. Thursday morning of last week.

13 Q. Had you discussed this matter,
14 that is this proceeding, or the dispute that
15 International Gold Star is having that is the
16 subject of this proceeding with Ms. Pincow
17 before Thursday of last week?

18 A. Once before. It goes back a
19 number of months. Probably -- I'm guessing it
20 was May...

21 THE WITNESS: ...because you told
22 me this might start in June and would I
23 come and testify.

24 MS. PINCOW: I'm sorry. I can't
25 look at you.

1 L. MILLER

2 THE WITNESS: Oh, excuse me.

3 A. Once before.

4 Q. Did you actually look for any
5 documents at that time in response to her
6 request?

7 A. I was not asked to.

8 Q. What were you asked?

9 A. Would I come and testify. And I
10 said yes.

11 Q. Are you testifying here today
12 voluntarily?

13 A. Yes.

14 Q. Okay. So have you been subpoenaed
15 to testify?

16 A. No.

17 Q. If you could please take another
18 look at the document that has been marked as
19 P-214.

20 A. (Witness complies.)

21 Q. Was this document actually
22 generated on October 18 of 2008 from what you
23 can see?

24 A. Yes.

25 Q. And was this a document that

1 L. MILLER

2 relates specifically to Gold Star?

3 A. Yes.

4 Q. How do you know?

5 A. In the middle of the top line it
6 says customer 004065. That's the same number
7 as the customer number on 137.

8 Q. Right towards the bottom of the
9 page? Is that where you see the customer
10 number on 137?

11 A. In that box, yeah.

12 Q. Does Queensboro manufacture any
13 dairy products for Natar Foods?

14 A. Yes.

15 Q. What products does it manufacture
16 for Natar?

17 A. Butter milk and a different
18 product than farmer cheese. One pound farmer
19 cheese.

20 Q. In order for a customer of
21 Queensboro to be able to -- withdrawn.

22 Is Queensboro's permission
23 required before somebody prints the Queensboro
24 plant identifier on a label?

25 A. Repeat the question.

1 L. MILLER

2 MR. FRIEDMAN: Could you read it
3 back.

4 (Record read.)

5 A. Not before they print it.

6 Q. Is it required before they affix a
7 label containing that unique plant identifier
8 to a dairy product?

9 A. Yes.

10 Q. Did Natar Foods receive the
11 permission of Queensboro Farms to print the
12 unique plant number of Queensboro Farms on a
13 product bearing a label of Grandmother's
14 Recipe?

15 MR. THOMPSON: Objection. I
16 believe he testified he doesn't know
17 what labels are used by his customers.

18 MR. FRIEDMAN: This is a different
19 issue. This is with respect to the
20 plant -- the unique plant number of
21 Queensboro Farms.

22 MR. THOMPSON: But you've put it
23 on a label with a particular trademark
24 and he testified he doesn't know what
25 trademarks are applied to them so I

1 L. MILLER

2 think you need to establish his
3 knowledge of what marks were applied to
4 the product once it's been shipped by
5 Queensboro.

6 MR. FRIEDMAN: I believe that your
7 objection is inappropriate as being
8 unnecessarily suggestive to the witness.

9 MR. THOMPSON: I'm establishing
10 that I don't believe -- I had tried to
11 just make the objection that you hadn't
12 raised a foundation for what you're
13 doing. You seemed not to agree and I
14 was trying to make my record clear as to
15 why I believe it was an inappropriate
16 question without foundation to give you
17 the opportunity to clear up that problem
18 for the record. If you choose not to do
19 it go ahead, but I've made my objection.

20 MR. FRIEDMAN: Very well.

21 Q. Do you need the question
22 rephrased?

23 A. Please.

24 Q. To the best of your knowledge, did
25 Queensboro authorize Natar Foods to print the

1 L. MILLER

2 Queensboro plant identifier on labels?

3 A. I don't know.

4 MR. FRIEDMAN: I'm going to show
5 the witness a document previously marked
6 as Petitioner's Exhibit -- I'm sorry
7 Respondent's Exhibit 5 at a deposition
8 of June 4, 2008. I have a photocopy for
9 Mr. Thompson but I believe I have the
10 original here.

11 (Pause on the record.)

12 Q. I'm showing you the document I
13 just identified. It's the actual original
14 label.

15 Do you recognize that?

16 A. I don't know that I recognize it.
17 I've seen it.

18 Q. Do you know if this label was
19 affixed to a product by Queensboro Farms?

20 A. I don't know.

21 Q. Was Natar Foods -- do you have any
22 knowledge with respect to this label?

23 A. I've seen it.

24 Q. Does it refresh your recollection
25 as to whether Natar Foods sold a product

1 L. MILLER

2 manufactured by Queensboro under a label of
3 Grandmother's Recipe?

4 A. There are products that we ship
5 with no labels on them similar to this and the
6 customer puts them on. I don't know if this
7 is the one in that case. I'm not in that
8 plant. I'm in the office in New York.

9 Q. The plant being the Canastota
10 plant.

11 A. Canastota plant. So I don't see
12 the product.

13 Q. Okay. I direct your attention,
14 please, to the second line from the bottom of
15 Respondent's Exhibit 5 with the plant number
16 of 36-0348 and next to it it says Canastota,
17 New York, 13032. Is that Queensboro Farms'
18 unique plant identifying number?

19 A. Yes.

20 Q. Was that number placed on this
21 label with the permission of Queensboro Farms?

22 A. I don't know.

23 Q. During your testimony you
24 identified a press machine that International
25 Gold Star supplied to Queensboro Farms.

1 L. MILLER

2 A. Yes.

3 Q. And that was pursuant to or
4 somehow in relation to a discussion that you
5 had with Robert Pincow.

6 A. Yes.

7 Q. Was -- could you describe in
8 further detail this press machine that
9 International Gold Star provided to Queensboro
10 Farms?

11 A. I guess it's best to say it sounds
12 like it's a -- either a rectangular or square
13 machine that we actually put down under
14 pressure, I think, onto the cheese to squeeze
15 the whey out of the cheese to end up with the
16 farmers cheese curd. It's weighted and it
17 presses out this whey from the product.

18 Q. Did International Gold Star
19 provide any other machines to Queensboro
20 Farms?

21 A. I don't think so.

22 Q. Does Queensboro Farms use this
23 machine for any customers other than Gold
24 Star?

25 A. Yes.

1 L. MILLER

2 Q. Is this machine in any way a
3 unique machine?

4 MR. THOMPSON: I object to the
5 form of the question as to any way
6 unique.

7 Q. Okay. Is this machine, to the
8 best of your knowledge, used by other -- this
9 type of machine, is it to the best of your
10 knowledge used by other dairy manufacturers?

11 A. I don't know. Very few people are
12 making this product now so it's not
13 widespread.

14 Q. When you say this product do you
15 mean --

16 A. Farmers cheese.

17 Q. Farmers cheese.

18 Was the machine sold to
19 Queensboro?

20 A. I don't think so. I really don't
21 remember.

22 Q. Where's the machine located?

23 A. In the plant in Canastota, New
24 York.

25 Q. Is there one or more than one such

1 L. MILLER

2 machine at the Canastota plant?

3 A. I only know of one.

4 Q. How is the farmers cheese packaged
5 prior to being sent to Gold Star?

6 A. After it's pressed out it's put
7 through a packaging machine that I guess you'd
8 say comes out with random weight rectangular
9 three-pound, roughly three-pound packages.
10 And those packages are put in a corrugated
11 box. The weight is tabulated for the whole
12 box and we sell it by the box. If that's your
13 question.

14 Q. But is it the case that Gold Star
15 is not the only customer to whom you sell this
16 same cheese?

17 A. That's correct.

18 MR. FRIEDMAN: I might be done.

19 I'm just reviewing my notes.

20 (Pause on the record.)

21 Q. What agreement, if any, did you
22 reach with Robert Pincow in connection with
23 him supplying the machine to Queensboro?

24 A. I don't think it was a formal
25 agreement. I think it was an arrangement

1 L. MILLER

2 whereby Gold Star would supply us the press in
3 order to make them private label product. And
4 I told him at the time that there might be
5 others that utilize it because they might not
6 make enough to what we call have enough
7 quantity for a batch.

8 Q. And was this agreeable to Mr.
9 Pincow?

10 A. Yes.

11 MR. FRIEDMAN: No further
12 questions at this time. Thank you.

13 MR. THOMPSON: We'll have just one
14 or two very short questions but I want
15 to straighten out that mismarked
16 document issue.

17 The document that is the invoice
18 which we had on the record identified as
19 Bates Gold 0313 I believe, 0313 is a
20 number that had been used previously.

21 MR. FRIEDMAN: Mine says 312.

22 MR. THOMPSON: Then I apologize.
23 It was 312 that had been used
24 previously.

25 MR. FRIEDMAN: Okay.

1 L. MILLER

2 MR. THOMPSON: And so -- yes, 312.

3 So my paralegal had the documents
4 renumbered as Gold 316 and just to make
5 our record clear, I would suggest that
6 we have Bates 316 designated as a
7 replacement Exhibit 137 which is the
8 document. If that's acceptable to you,
9 Mr. Friedman, we'll just get rid of the
10 old one so as to clean up the Bates
11 numbering issue.

12 MR. FRIEDMAN: That's agreeable.

13 MR. THOMPSON: I also have a copy
14 for you.

15 EXAMINATION BY

16 MR. THOMPSON:

17 Q. Mr. Miller, I'll ask you to look
18 at the document we've marked as Respondent's
19 136 which is the document bearing the words,
20 "To Butch from Cindy," two pages.

21 A. Okay.

22 Q. And I'll also ask you to look at
23 Petitioner's 214. That was the document that
24 Mr. Friedman had asked you to pull out.

25 A. Okay.

1 L. MILLER

2 Q. Now, both of those have a fax
3 transmittal line up on the top of October 17th
4 at 9:35 a.m.; is that right?

5 A. Yes.

6 Q. Now, you testified that you
7 believed that the document, Petitioner's 214,
8 had been generated on October 18th, 2008 based
9 upon the fact that there's that date on the
10 upper line; is that right?

11 A. I guess. I don't understand.

12 Q. I will just remind you that
13 October 18th was Saturday. Does that help
14 you --

15 A. My only recollection is that all
16 our billing documents end with a Saturday
17 date, the 18th being a Saturday. That may be
18 the way it's in the computer for the week
19 ending the 18th. But I think these were --
20 they definitely were faxed on the 17th.

21 Q. So does that affect your testimony
22 of when you believe the document identified as
23 Petitioner's 214 was physically generated?

24 A. I guess it was the 17th.

25 MR. THOMPSON: Thank you. That's

1
2 all I have.

3 MR. FRIEDMAN: I have nothing
4 further at this time.

5 MR. THOMPSON: I thank you very
6 much for your time, Mr. Miller.

7 MR. FRIEDMAN: Thank you.

8 THE WITNESS: Okay. Thank you.

9 MR. THOMPSON: And we'll be happy
10 to send you back to work.

11 (Time Noted: 11:35 a.m.)
12
13
14
15
16
17
18

19 _____
20 LEWIS "BUTCH" MILLER
21

22 Subscribed and sworn to before me
23 this ____ day of _____, 2008.
24
25 _____

C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, FRANCIS X. FREDERICK, a Notary
Public within and for the State of New
York, do hereby certify:

That LEWIS "BUTCH" MILLER, the
witness whose deposition is hereinbefore
set forth, was duly sworn by me and that
such deposition is a true record of the
testimony given by the witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I
am in no way interested in the outcome
of this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 27th day of
October, 2008.

FRANCIS X. FREDERICK

----- I N D E X -----

| WITNESS | EXAMINATION BY | PAGE |
|--------------|----------------|-------|
| LEWIS MILLER | MR. THOMPSON | 4, 69 |
| | MR. FRIEDMAN | 18 |

----- INFORMATION REQUESTS -----

DIRECTIONS: NONE

RULINGS: NONE

TO BE FURNISHED: NONE

REQUESTS: NONE

MOTIONS: NONE

----- EXHIBITS -----

REGISTRANT FOR ID.

Exhibit 134

Notice of Deposition of Louis (sic)

("Butch") P. Miller..... 4

Exhibit 135

document bearing production number

GOLD 0314..... 4

----- EXHIBITS -----

REGISTRANT FOR ID.

Exhibit 136

document bearing production number

GOLD 0313..... 4

* * *

----- EXHIBITS -----

PETITIONER FOR ID.

Exhibit 213

photocopy of sour cream label,

pot cheese label and farmer

cheese label..... 21

Exhibit 214

document headed Oct-17-2008 09:35AM

FROM-QUEENSBORO FARMS..... 41

1 NAME OF CASE: FOUR SEASON'S DAIRY v. IGS

2 DATE OF DEPOSITION: OCTOBER 20, 2008

3 NAME OF WITNESS: LEWIS "BUTCH" MILLER

4 Reason codes:

5 1. To clarify the record.

6 2. To conform to the facts.

7 3. To correct transcription errors.

8 Page _____ Line _____ Reason _____
From _____ to _____

9 Page _____ Line _____ Reason _____
From _____ to _____

10 Page _____ Line _____ Reason _____
From _____ to _____

11 Page _____ Line _____ Reason _____
From _____ to _____

12 Page _____ Line _____ Reason _____
From _____ to _____

13 Page _____ Line _____ Reason _____
From _____ to _____

14 Page _____ Line _____ Reason _____
From _____ to _____

15 Page _____ Line _____ Reason _____
From _____ to _____

16 Page _____ Line _____ Reason _____
From _____ to _____

17 Page _____ Line _____ Reason _____
From _____ to _____

18 Page _____ Line _____ Reason _____
From _____ to _____

19 _____
20
21 LEWIS "BUTCH" MILLER
22
23
24
25

**Gold Star Fresh
GRADE A PASTEURIZED
SOUR CREAM**

Made with Milk, Cream, Skim Milk, Modified Food Starch, Guar Gum, Sodium Citrate, Carrageenan, Locust Bean Gum and Culture.

**KEEP REFRIGERATED
10 LBS**

International Gold Star Trading Corp.
Brooklyn, NY
(718) 522-1545

POT CHEESE

Ingredients: CULTURED SKIM MILK,
MILK, SALT.

KEEP REFRIGERATED

NET WEIGHT: 5 LBS

PLANT # 380348

DISTRIBUTED BY

International Gold Star Trading Corp.
Brooklyn, NY 11231
(718) 522-1545

**GOLD STAR'S COUNTRY FRESH
FARMER CHEESE**

ALL NATURAL NO PRESERVATIVES

**INGREDIENTS: CULTURED PASTEURIZED
SKIM MILK, CREAM AND SALT.**

KEEP REFRIGERATED

WEIGHT AT TIME OF SALE AND RESALE

Int'l Gold Star Trading Corp., Brooklyn, NY Tel. (718) 522-1545

Nutrition Facts

Serving Size 1 oz (30g/about 2 Tbsp.)

Servings Per Container: Varied

Amount Per Serving

Calories 50 Calories from Fat 25

% Daily Value

Total Fat 2.5g 4%

Saturated Fat 1.5g 8%

Cholesterol 10 mg 4%

Sodium 120 mg 5%

Total Carbohydrate 0g 0%

Dietary Fiber 0g 0%

Sugars 0g

Protein 5g

Vitamin A 0% Vitamin C 0%

Calcium 0% Iron 0%

BLACK ON WHITE

ACT. SIZE: 1 3/4" X 4"

Four Seasons Dairy, Inc., Petitioner

v.

International Gold Star Trading Corp., Registrant

Cancellation No. 92/042,082

Petitioner Exhibit

213

COM: 011 LOC: 003 CUSTOMER: 004065 DATE: 101808 BASE: 0001 OVRIDE: 004065

| PRODUCT | DESCRIPTION | B-DATE | NET RATE | BASE RATE | OVER RATE | O-DATE |
|---------|--------------|---------------|----------------|-----------|-----------|--------|
| 000250 | SR CRM 10LB | 042304 | 8.50000 | 11.60000 | 3.10000 | 101907 |
| *000288 | 3# FARMERS C | <u>082296</u> | <u>3.09000</u> | 2.50000 | .59000- | 100108 |
| 000297 | 5# POT CHEES | 092696 | 9.70000 | 6.00000 | 3.70000- | 100107 |
| 000314 | 1# FARMERS C | 091197 | 2.33000 | 1.90000 | .43000- | 80105 |
| 000890 | PALLETS CHAR | 073102 | | 1.00000 | 1.00000 | 73102 |
| 000891 | PALLETS RETU | 073102 | | 1.00000 | 1.00000 | 73102 |

(Add, Change, or Delete) MODE: **ADD**

ENTER=Continue

F3=Exit

F9=Change Mode

F12=Top Line

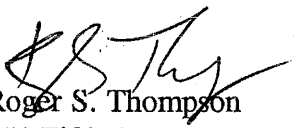
| | | |
|---------------------------|---|--------------------------------|
| -----X | : | |
| FOUR SEASONS DAIRY, INC., | : | Cancellation No. 92/042,082 |
| | : | |
| Petitioner, | : | |
| | : | Mark: BABUSHKA'S RECIPE |
| v. | : | |
| | : | Reg. No. 2,479,287 |
| INTERNATIONAL GOLD STAR | : | |
| TRADING CORP., | : | |
| | : | |
| Registrant. | : | |
| | : | |
| -----X | | |

PLEASE TAKE NOTICE that, pursuant to Rule 30(a)(1) of the Federal Rules of Civil Procedure, Registrant, Gold Star International Trading Corp. ("Gold Star"), will take the deposition of Luis ("Butch") P. Miller of Queensboro Farm Products, Inc. at 15602 Liberty Ave, Jamaica, NY, 11433-1040 in the above-captioned action, at the offices of Cohen Pontani Lieberman & Pavane, LLP, located at 551 Fifth Avenue, Suite 1210, New York, New York, before a person designated by Rule 28 of the Federal Rules of Civil Procedure, by stenographic and audiovisual means, commencing on October 20, 2008 at 9:30 a.m., and continuing thereafter from day to day until completed.

You are invited to attend and cross-examine.

Respectfully submitted,
COHEN, PONTANI, LIEBERMAN & PAVANE

By


Roger S. Thompson
551 Fifth Avenue
New York, New York 10176
(212) 687-2770

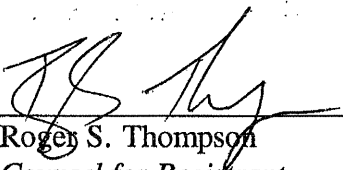
Dated: October 10, 2008

Attorneys for Registrant,
International Gold Star Trading Corp.

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, a true and correct copy of the foregoing Notice of Deposition was served by first-class mail, postage pre-paid, and by e-mail on counsel for petitioner, addressed as follows:

Samuel Friedman, Esq.
samfriedman@verizon.net
225 Broadway, Suite 1804
New York, New York 10007



Roger S. Thompson
Counsel for Registrant

October 10, 2008
Date

CUSTOMER TOTALS:

.00

.00

.00

.00

.00

\$1.00

BILCOD: 3 LAST PAYMENT: 10/28/98 FOR

\$50.00

8/22/98
8/22/98
CUSTOMER TOTALS:

.00

.00

.00

354.00-
3.204.00
2.850.00

354.00-
2.850.00
2.850.00

BILCOD: 3 LAST PAYMENT: 01/01/99 FOR
PHONE: (000) 000-0000 CONTACT:

\$2.302.71

121284 12/12/98
121984 12/19/98
122656 12/26/98
10256 1/02/99

CUSTOMER TOTALS:

2.280.65
2.280.65

1.950.77
2.355.99
2.280.65

6.587.41

1.950.77
4.306.76
6.587.41
8.868.06
8.868.06

BILCOD: 3 LAST PAYMENT: 12/29/98 FOR
PHONE: (000) 000-0000 CONTACT:

\$2.083.10

INTERNATIONAL GOLD STAR
TRADING ATTN: RIMA

NY 11231

570 SMITH ST

121285 12/12/98
121985 12/19/98
10257 1/02/99

CUSTOMER TOTALS:

1.814.35
1.814.35

1.454.95
1.411.55

2.866.50

1.454.95
2.866.50
4.680.85
4.680.85

BILCOD: 3 LAST PAYMENT: 12/29/98 FOR

\$12.225.60

80850 8/08/98
80850 8/08/98

14.915.00
15.419.00-

14.915.00 ✓
504.00-

GOLD 0314

Four Seasons Dairy, Inc., Petitioner
v.
International Gold Star Trading Corp., Registrant
Cancellation No. 92/042,082
Registrant Exhibit 135

COMPANY: 11 LOCATION: 3 CUSTOMER: * 4065 INTERNATIONAL GOLD STAR

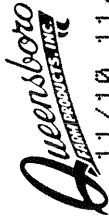
MANDATORY PO#: 0 NEW CUST#: QRY1: QRY2: QRY3:
 (MMDDYY) VENDOR: 000000 BANKID: 00 NOPROJ: 0 EDICUST: 0
 * BEGINNING DATE: 082396 FINCHG: .000 LAST PAY AMT: 4,993.92
 LAST PAYMENT: 101608 CRED PERIOD: 04 REACT DATE: 000000
 LAST PURCHASE: 100708 CRED LIMIT: .00 TAXPAYER ID:
 CUSHIS: TAX EXEMPT: 000000000000 FAX: 000 00000000
 DUNSNO: TERMS: 001 DUNDYS: 00 COLLECTOR: 001
 BANK ACCOUNT: CRDPRT: 0 STORDEPT: CHGBOTTLE: 0
 BANK NUMBER: 0000000000 BUYELG: 0 DEFELG: 0 PRICERND: 0
 PRV BALANCE PAYMENTS ADJUSTMENTS CUR CHARGES BALANCE DUE
 20838.50 4993.92 .00 .00 15844.58
 AGED 1: 8108.16 2: .00 3: 3060.51 4: 9669.83
 -----W-T-D-----M-T-D-----P-T-D-----Y-T-D-----
 SALES: .00 8108.16 84717.64 84717.64
 COST: .00 4888.62 62814.13 61571.15
 CREDITS: .00 .00 .00 .00
 PROMOTIONS: .00 .00 .00 .00
 ADJUSTMENTS: .00 .00 850.00 850.00
 COLLECTIONS: .00 .00 80448.43 80448.43
 POINTS: 2624 33156 33156
 ENTER=Continue F3=Exit F4=Codes F5=Update F24=More Keys CHANGE

TO: Butch
 FROM: Cindy
 2 pgs

Four Seasons Dairy, Inc., Petitioner
 v.
 International Gold Star Trading Corp., Registrant
 Cancellation No. 92/042,032

Registrant Exhibit 136

GOLD 0313



4 Rasbach Street / Canastota, N.Y. 13032 • Telephone (315) 697-2235

INVOICE



11/10 11/11 11/12 11/13 11/14 11/15

| MON. | TUES. | WED. | THURS. | FRI. | SAT. | DESCRIPTION & SIZE | TOT. UNITS | UNIT PRICE | AMOUNT |
|------|-------|------|------------|------|------|---------------------------------|------------|--------------------|-------------------|
| | | | 1122 60 | | | FARMERS CHEESE 5# POT CHEESE | 1122 60 | 1.75000 5.35000 | 1963.50 321.00 |

PLEASE
RETURN
THIS
STUB
WITH
YOUR
PAYMENT

2284.50

111616

| INVOICE NUMBER | INVOICE DATE |
|----------------|----------------|
| 111616 | 11/15/97 |
| RT NUMBER | ACCOUNT NUMBER |
| 7 70 | 4065 |

POINTS

2284.50

| | |
|---------|--|
| SOLD TO | INTERNATIONAL GOLD STAR TRADING ATTN: RIMA 570 SMITH ST BROOKLYN NY 11231 |
| DEL TO | INTERNATIONAL GOLD STAR TRADING ATTN: RIMA 570 SMITH ST BROOKLYN NY 11231 |

SAL 2284.50
NET 2284.50

| INVOICE DATE |
|----------------|
| 11/15/97 |
| ACCOUNT NUMBER |
| 7 4065 |

01-000000-004065-0001-4065

OFFICE COPY

Four Seasons Dairy, Inc., Petitioner

International Gold Star Trading Corp., Registrant
Cancellation No. 92/042,082

Registrant Exhibit

137

GOLD 0316